

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT REID, on behalf of himself and all others similarly situated, ) Case No. 11cv1310-L (BLM)  
Plaintiffs, ) **ORDER CLARIFYING THE COURT'S  
NOVEMBER 14, 2011 ORDER  
GRANTING JOINT MOTION FOR A  
PROTECTIVE ORDER WITH  
MODIFICATIONS**  
v. ) [ECF No. 29]  
JOHNSON & JOHNSON and McNEIL NUTRITIONALS, LLC, )  
Defendants. )

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On November 23, 2011, Defendants filed an unopposed motion for clarification of the Court's November 14, 2011 Order granting joint motion for a protective order with modifications. ECF No. 29. In the November 14, 2011 order, the Court modified paragraph 23 of the Protective Order as follows:

Paragraph 23 should read: "If this action is concluded before trial is commenced, the Order shall remain in full force and effect after such conclusion and the Court shall retain jurisdiction **over the parties and recipients of the Protected Documents for enforcement of the provisions of this Order for one year following termination of this litigation.** In such a case, all materials (including copies) containing information designated as "Confidential" or "Highly Confidential" shall be returned to the Producing Party, or shall be disposed of in a manner assuring its confidential destruction, within the following time period: Within 30 days after final termination of this Action either by consensual dismissal with prejudice, after final appellate review has been obtained, or after the time for appeal has lapsed without the filing of an appeal by either of the parties. Each party shall provide to the Designating Party a declaration certifying compliance with this paragraph.

1 ECF No. 28.

2 Defendants seek clarification of two issues. First, Defendants are concerned with the  
3 duration of the protection afforded to "Confidential" and "Highly Confidential" documents. ECF  
4 No. 29 at 2. Specifically, Defendants want to know if the information and documents that are  
5 subject to the Protective Order will be protected indefinitely under that Order. Id. Second,  
6 Defendants want to know if the parties will be able seek enforcement of the Protective Order  
7 directly with this Court more than one year after the action terminates. Id. Defendants state  
8 that Plaintiff does not oppose this motion. Id. at 1.

9 1. Documents subject to the protective order

10 The information and documents that are subject to the Protective Order will be  
11 protected indefinitely under the terms of the Protective Order.

12 2. Enforcement of the protective order

13 The parties will not be able to seek enforcement of the Protective Order with this Court  
14 more than one year after the action terminates. Defendants cite to Kokkonen v. Guardian Life  
15 Ins. Co., 511 U.S. 375, 380-381 (1994) in support of the proposition that they may seek relief  
16 from this Court at any time "should anyone engage in the unauthorized use or dissemination  
17 of Defendants' confidential business and commercial information." ECF No. 29 at 2. In  
18 Kokkonen, the parties (1) settled their case, (2) executed a stipulation and order of dismissal  
19 with prejudice (which did not refer to the settlement agreement or reserve District Court  
20 jurisdiction for enforcement), and (3) later had a dispute about the parties' obligations under  
21 the settlement agreement. Kokkonen, 511 U.S. at 376. Respondent filed a motion to enforce  
22 the settlement agreement and petitioner opposed claiming that the court lacked subject  
23 matter jurisdiction. Id. The Court found that the federal district court lacked jurisdiction over  
24 the claim for breach of contract and that no ancillary jurisdiction existed. Id. at 380.  
25 However, the Court stated that the parties could have provided for the district court's  
26 enforcement of the settlement agreement if they so wished. Id. at 381. Under Fed. R. Civ.  
27 P. 41, with the consent of the parties, the district court could have made retention of  
28 jurisdiction over the settlement agreement part of its dismissal order, in which case ancillary

1 jurisdiction to enforce the agreement would have existed. Id. at 381. "Absent such action,  
2 however, enforcement of the settlement agreement is for state courts, unless there is some  
3 independent basis for federal jurisdiction." Id. at 382.

4 Here, the Court is exercising its discretion to limit the length of time it will retain  
5 ancillary jurisdiction to one year after the termination of the action. ECF No. 28. The Court is  
6 under no obligation to retain jurisdiction over the parties' agreement indefinitely and finds it  
7 inappropriate to do so in this case. See Moore v. Gilead Sciences, Inc., 2011 WL 5572975, \*  
8 2 (N.D.Cal., Nov. 16, 2011) (stating that the Supreme Court has interpreted Rule 26(c) as  
9 conferring "broad discretion on the trial court to decide when a protective order is appropriate  
10 and what degree of protection is required") (quoting Seattle Times Co. v. Rhinehart, 467 U.S.  
11 20, 36 (1984) ("[t]he unique character of the discovery process requires that the trial court  
12 have substantial latitude to fashion protective orders.")). If the parties find it necessary to  
13 seek enforcement of the protective order more than one year after termination of the action,  
14 they will have to file an appropriate new action.

15 **IT IS SO ORDERED.**

16 DATED: December 1, 2011

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18 BARBARA L. MAJOR  
19 United States Magistrate Judge  
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